

1215212 [2012] RRTA 1165 (5 December 2012)

DECISION RECORD

RRT CASE NUMBER:	1215212
DIAC REFERENCE(S):	CLF2012/146828
COUNTRY OF REFERENCE:	Sri Lanka
TRIBUNAL MEMBER:	David Corrigan
DATE:	5 December 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Sri Lanka, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The delegate refused to grant the visa [in] September 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Credibility

19. The Tribunal accepts the difficulties of proof faced by applicants for refugee status and complementary protection. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, 1992, at paragraph 196 197 and 203 204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status and complementary protection obligations.
20. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. This material includes:
- Entry interview dated [May] 2012;
 - Application for protection visa and accompanying statutory declaration dated [July] 2012;
 - Agent's submission dated [August] 2012;
 - Interview with delegate dated [July] 2012;
 - Copy of untranslated document dated [2006] under the name of the O.I.C. Crime Branch, Jaffna (D. f.18);
 - Copy of ICRC Detention Attestation dated [March] 2009 stating that the applicant was visited by ICRC delegates [in] February 2007 "In the head office, Colombo by the pathetic situation in Sri Lanka." (D. f.19);
 - Letter from Assistant Parish Priest, [church deleted: s.431(2)], Jaffna, undated, (D. f.20) stating that the applicant's uncle was shot at in [Town 1] [in] 2006 by unknown persons. It says the applicant was also threatened and that he escaped to Australia to seek protection. (D. f.20);
 - Copy of complaint docket by applicant to the "Human Right Commission of Sri Lanka" dated [February] 2012 (D. f.21);
 - Copy of complaint to police by a [name deleted: s.431(2)] re a gunshot injury (D. ff 22-23);
 - Copy of letter to the Human Rights Commission, Jaffna Branch by the applicant's mother dated [2006]. The letter refers to the circumstances surrounding the shooting of her husband (D. f.24);
 - Copy of letter to the Resident Representative, UNHCR, Temple Road, Jaffna dated [September] 2012. The letter refers to the circumstances surrounding the shooting of her husband in an identical matter to the above letter (D. f.25);
 - Copy of letter to the Resident Representative, ICRC, Temple Road, Jaffna dated [September] 2012. The letter refers to the circumstances surrounding the shooting of her husband in an identical matter to the above letter (D. f.27);
 - Copy of complaint docket to Human Rights Commission of Sri Lanka dated [2006] by [name deleted: s.431(2)] (D. f.26);
 - Copy of untranslated Sri Lankan police form with date of [date deleted: s.431(2)]/2006 (D. f.28);

- Copy of untranslated letter dated [April] 2012 said to be countersigned by [name deleted: s.431(2)], Administrative officer for Divisional Secretary, [Village 2], [Area 3] (D. f.30);
- Copy of letter, dated [April] 2012, by applicant's father to the Divisional Secretary, [Village 2], [Area 3] stating that the applicant "is a resident of this village since birth." (D. f.31)
- Copies of untranslated and translated birth certificate of applicant (D. ff.32-35);
- Copy of applicant's driving licence (D.f.36);
- Copy of untranslated identity document of applicant (D. f.37 & f.45);
- Copy of applicant's passport (D.46).

22. The applicant's claims can be summarised as follows. He is a Tamil born in [year deleted: s.431(2)] in Batticaloa, Sri Lanka. At a young age his mother was fearful of him being recruited by the LTTE so he went to live with his uncle in Jaffna. During this time he was trained by his uncle as a [Profession A]. Between 1995 and 1997 his uncle's family and he were forced to relocate to other areas ([Town 4], [Town 5], [Town 6]) owing to the conflict. In 2006 on two occasions he was subjected to questioning and ID checks by the Sri Lankan authorities in the Northern province. He was suspected of being involved with the LTTE due to being born and registered in Batticaloa. He was interrogated and on at least one occasion was subjected to physical abuse.

23. [On a certain day in] 2006, the applicant's uncle was shot at their [Business B] ([name deleted: s.431(2)]) in [address deleted: s.431(2)] at 10.30am in the morning. Two men dressed in casual clothes arrived on a [motorcycle]. One fired a shot at his uncle and missed and then hit his uncle in the leg. The applicant ran to a nearby friend, [Mr C]'s house. He remained there for one hour and then went to [Mr D]'s home who lived near the [Town 7] Temple. He stayed there for about one month. He learnt that his uncle had managed to escape but was admitted to hospital. The news of the shooting appeared in the local Tamil newspaper, Uthayan on [the day following the incident]. His aunt lodged a police report. To the best of his knowledge the police did not conduct any investigation. About 2-3 days prior to the shooting his uncle told him that he had received threatening phone calls at the shop. His uncle said they did not identify themselves but they had bribed him. As it was quite common for wealthy Tamils to be targeted by the LTTE and the authorities the applicant believes it was for that reason. In [the same month] his aunt informed him that his uncle had fled Jaffna and shortly after his aunt joined him. In the month following the attack, the applicant did not go to work or leave [Mr D]'s house. He then began working again self-employed as a [Profession A] and moved to a house located on [address deleted: s.431(2)], Jaffna.

24. In February 2007, the applicant was on a motorcycle on the [Road] heading towards a customer's house in [Town 1] to deliver goods. As he was passing the [School] he was overtaken by two men on a motorcycle. They stopped their vehicle in front of him and demanded he stop at the junction. They were dressed in casual clothes and had helmets on and had beards. They asked about the whereabouts of his uncle and he told them he did not know. They slapped him on the face several times and kept asking. They told him they would come back to find him. They asked for his address and he supplied them a false

address. The applicant told his brother about the incident and he lodged a complaint at the Human Rights Commission office.

25. In about July 2007, the applicant was threatened a second time. He was on a pushbike delivering goods to a customer in the [area]. When he reached the [main road] he stopped by two men wearing helmets on a black motorbike. He was taken to a nearby alley and was questioned again about his uncle's whereabouts. He told them he did know and was told he was lying. The applicant then went to the Jaffna police station to lodge a complaint but the officer on duty asked him for a bribe. As he was not willing to pay it they would not assist. The applicant then maintained a low profile and mostly remained indoors and did not venture into crowded and public places. In 2009, his brothers moved into his home in Jaffna to keep a close watch on him.
26. [In] February 2012, the applicant was on his motorcycle to the [Town 1] area to deliver goods. He was once again stopped by two men wearing helmets on a black motorcycle. He was taken to a nearby alleyway and asked about his uncle's whereabouts. They threatened to shoot him. He broke down in tears and begged them to let him go. He told them he did know about his uncle's whereabouts and they took gold coins and a chain he had and they told they would shoot him as they needed to know where his uncle was.
27. On or about 19 July 2012 following the applicant's arrival in Australia he learnt that his brother who had been riding had been threatened by men on a motorcycle who asked him about the whereabouts of the motorcycle's owner.
28. In the agents' submission dated 10 August 2012 it was submitted that the applicant would be at risk as a "wealthy Tamil businessman in Sri Lanka" and some country information was referred to in support of this. It was also submitted that the applicant would be at risk as a "failed Sri Lankan asylum seeker" based on his Tamil ethnicity, his (imputed) anti-government and pro-LTTE political opinion, his illegal departure from Sri Lanka, his lack of original passport or travel documentation and his application for protection in Australia. Country information was referred to in support of this. Country information was also referred to in respect of whether the applicant could relocate in Sri Lanka.
29. In a further agent's submission dated 23 November 2012 country information concerning the treatment of Tamils and failed asylum seekers was referred to including information about the illegal departure offences contained in the Sri Lankan Immigrants and Emigrants Act. It was submitted that the applicant earned 150,000 rupees per month that was over 10 times the median income of households in Jaffna and that he would therefore be viewed as a wealthy person especially as he personally owned [goods] and that he would be in danger as a wealthy Tamil businessman.

Hearing

30. The applicant appeared before the Tribunal on 26 November 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. The applicant was represented in relation to the review by his registered migration agent.
31. The applicant stated that he operated his own [Business B] business in Jaffna and that two of his brothers were now running it. He described the business as having gone well and that his monthly income from it was 150,000 rupees. He said it still generates good profits.

As to the type of motorbike he owned, he said showed me a photo of him beside it. He said there were many of these in Jaffna.

32. The applicant said he lived with his uncle in Jaffna from 1993. However, in 1995 due to the fighting they were displaced and had to live in [Town 4] for two months, [Town 5] for eight months and [Town 6] for eight months. As to whether he had any problems with the authorities he said he had been accused of involvement with the LTTE on 5-6 occasions. He said in 2006 he was in Jaffna and he was hit with a stick. He said that he had a pain and he pointed to his back. He had been passing through a checkpoint but he was not detained. He did not seek medical treatment but used herbal medicine on himself. In the same year, he was travelling on his motorbike in Jaffna when he was again stopped and accused of supporting the LTTE. He was hit with a stick and suffered internal injuries in his right foot. He did not seek medical treatment and treated himself with herbal medication.
33. I asked the applicant a series of questions about his claims regarding the shooting of his uncle. He said two people came on a [motorbike] and uncle was outside. His uncle shouted to him to run. His uncle ran but was shot in the right leg. The assailants did not say anything on the day. They were dressed in civilian clothes and had masks on their faces. As to whom they were, the applicant said they were unidentified but he suspected they were linked to the army as in Sri Lanka people like that threatened Tamils. His uncle told him that he had received phone calls prior to this incident from unidentified persons who asked for money and threatened him. The applicant said when the shooting occurred, he ran away and went to his friend [Mr C] who was in the same area. He stayed there for 15 minutes and then went to an associate of his uncle in [Town 7] who was called [Mr D]. He stayed there for one month. His uncle was taken to a hospital and the ICRC took him by ship to Colombo. The police investigated the matter but as far as he knows nothing has happened. I asked him whether his aunt was involved in complaining to the police and he said he did not know. I put to him that this was inconsistent with what he had said in his statutory declaration that his aunt was required to lodge a police report and he said he did not remember that. The applicant stated that after the incident he started his own business until members of his family joined in 2009.
34. I asked the applicant a number of questions about his claims regarding incidents in 2007. He said the first one happened in February 2007 in [Town 1] whilst he was going to give a client [goods]. Two men on a motorbike stopped him and asked him where his uncle was and beat him. They wore civilian clothes and had face masks. As to whether they had beards, he said they had masks on so he did not know. I said this was inconsistent with his statutory declaration where he said they had beards. He said they were completely masked and he could just see their eyes. He said he was hit on the face and cheeks. As to whether they said anything other than asking for the whereabouts of his uncle, he said no. I said this was inconsistent with his statutory declaration, where he said they asked for his address and he supplied them with a false address. He said he could not remember if they asked for an address. He said he complained to the police but the police but they asked him for a bribe. As to whether there had been any complaints made to any other body about the incident he said he told his brother (who lived in Batticaloa) who complained to the Human Rights Commission. They gave him a letter about the problem but they did not contact the applicant. I put to the applicant that I had concerns about the copy of the complaint docket to the HRC because it used the term "Human Right Commission" without the plural of "s" in the word "Right" and that this may me think the document was not authentic and cast doubts about his credibility. He said his brother told him this and he was in Jaffna. The applicant

said the HRC did not question him. I further put to the applicant for comment that I had concerns about the authenticity of the ICRC document because it referred to a “detention attestation” and he wasn’t detained; that it said he was visited by an ICRC delegate and he wasn’t; and that the use of the wording “pathetic situation in Sri Lanka” was not the type of wording that would be consistent with the use by an official body. He said the brother had obtained the document for his protection and there was a war going on. They may have visited him and he may not have been there but he was not sure.

35. In relation to the second claimed incident in 2007, the applicant said he was in [a town] to give [goods] to a client when he was stopped by two men on a black motorbike. They had face masks on but he did not know whether they were the same people as in the first incident in 2007. As to whether they sounded the same, he said they had the same voices. They threatened him to tell them where his uncle was or he would be shot. He told them he didn’t know and they let him go. He did not complain to the police after this incident. He said he carried on his business.
36. The applicant claimed that in 2012 he was on his motorbike and he was stopped by two men on a motorbike. They wore masks and civilian clothes. He thought they were the same people as they sounded the same. They asked about his uncle’s whereabouts and he said he did not know. They had a hand pistol and took [goods]. They threatened him, he screamed and they let him go. I commented that more than four years had passed since the last claimed incident and more five years had passed since the shooting of his uncle might make me doubt that he would have been targeted by these men. He said the fact that he did business with his uncle made these men suspect and threaten him.
37. The applicant claimed that since he had left Sri Lanka his elder brother has been threatened. It occurred [in] June 2012 when men on a motorbike followed him. He was stopped three kilometres away from the business in Jaffna. He was threatened by two men but his brother did not say how they were dressed. They asked where the applicant was and threatened him.
38. I put to the applicant for comment certain country information indicating an improved human rights situation for Tamils since the ending of the war, including that the UNHCR had commented that there was no longer a need for group based protection mechanisms or for presumptions of eligibility for Tamils from the north of the country and that the Sri Lanka had recently closed its remaining internally displaced person camp. I also mentioned that he had not targeted by the authorities for five years. He said he would be at risk as a Tamil especially given his business was doing well and that he was a rich man. I further put to the applicant the substance of country information from a range of Australian and foreign government agencies indicating that returnees were not being subjected to ill-treatment upon return. I also pointed out that while under the Immigration and Emigration Act he could face a prison sentence of between 1 to 5 years and a fine between 50,000 to 200,000 rupees, DFAT had recently advised that in reality this is seldom enforced and that no failed asylum seekers who had returned from Australia had been charged for offences related to their illegal departure. I noted that he had described that he had an income of 150,000 rupees of month and had said that the business was still going well, so I doubted that even if he was fined it would amount to serious harm or significant harm. He said he will face discrimination and problems with the CID for seeking asylum and that they will suspect he has been involved with the LTTE.

39. The agent made an oral submission covering matters that were referred to in written submissions. She referred to the reports of “Sinhalisation” of Tamil areas with land grabs. She said that the interrogation process upon return, even if he is released, may amount to serious or significant harm. She submitted that he could be detained for up to three months and physically assaulted and subjected to poor prison conditions.

Independent country information

40. Human rights observers have noted a number of improvements in the overall situation in Sri Lanka for the Tamil communities living in the North and the East. Reports of human rights abuses in the Northern and Eastern provinces have reportedly decreased and in these areas “there have been no cordon and search operations since the end of the conflict in May 2009”.¹ Large numbers of Tamils displaced by the fighting have been allowed to leave the camps in which they were being held. Roads linking Colombo to the North and East have been reopened creating increased opportunities for trade and development, and allowing for the return of former residents, visiting relatives, and even tourism.²

41. The Australian Department of Foreign Affairs and Trade have recently stated:

The Sri Lankan Government has released over 10,000 former LTTE cadre after completing Government-run rehabilitation. According to Ministry of Defence statistics from 8 August 2012, 10,973 persons have been re-integrated after completing rehabilitation. Another 636 persons were undergoing rehabilitation. Another 160 persons were undergoing legal proceedings.

...

Sri Lanka closed its remaining internally displaced person (IDP) camp, known as Menik Farm, on 24 September 2012.

The security situation in the north and east is greatly improved since the end of the military conflict, although incidents of violence can occur.

A visible security forces presence remains, particularly in the Northern Province, although the number of officers has reduced slightly since the end of the conflict. The visibility of military is less than before, with officers being confined to their barracks and police responsible for law and order. The role of the security forces in the north and east, including intelligence operatives, continues to include the monitoring of anti-government sentiment, LTTE and any form of civil resistance.

Mines and unexploded ordnance remain widespread in the north, particularly the northern Vanni region, although demining is continuing. A few isolated areas which have not yet been certified as cleared of mine or UXO hazards remain in the east. The security forces continue to uncover caches of weapons, ammunition, explosives and other remnants of war in both the Eastern and Northern Provinces, although this is less frequent now than in the first couple of years after the conflict.

¹ United Kingdom: Home Office, Country of Origin Information Report - Sri Lanka, 18 February 2010, 4.23 in: <http://www.unhcr.org/refworld/docid/4b8bdb0c2.html>.

² <http://www.csmonitor.com/World/Asia-South-Central/2010/0226/Sri-Lanka-ambitious-plan-to-rebuild-ground-zero-in-war-with-Tamil-Tigers>

Incidents of abduction have significantly reduced since the time of the military conflict and the immediate aftermath of the conflict, although cases continue to be reported.

The crime wave that was reported in the Northern Province in the immediate aftermath of the conflict, including abduction for ransom and thefts, has reduced.

More generally, residents of the north continue to call for the removal of the military from their areas and a return to civilian administration. Those residents engaged in political work (in an anti-government stance) or involved in human rights work may be targeted.³

42. An article in the Weekend Australian of May 2010 provided an overview of Sri Lanka. It posed the question:

Is it safe for Tamils in Sri Lanka? Most agree that it is. There is a common misconception in Australia, fed in part by the Tamil diaspora, that Tamils are subject to acute, daily persecution in Sri Lanka. They are not ... In the north things are complicated. There, many Tamils are victims of war and trauma or are displaced. The northern regions are battle scarred and dilapidated.... Most Tamils live in Colombo, Sri Lanka's raffish southern capital. They exist side by side with the Sinhalese majority, studying, working and prospering.⁴

43. The UNHCR's most recent eligibility guidelines for Sri Lanka, dated 5 July 2010, provide information on the situation for those accused of supporting the LTTE. The UNHCR states that in the immediate post-conflict period there have been allegations of enforced disappearances of persons suspected of LTTE links. The UNHCR also indicates that there have been a number of cases of the arrest and detention of persons suspected of LTTE links, who have been detained on limited evidence and often for extended periods. The UNHCR's eligibility guidelines give the following information on persons suspected of having links to the LTTE:

Persons Suspected of Having Links with the Liberation Tigers of Tamil Eelam (LTTE)

In the wake of the conflict, almost 11,000 persons suspected of LTTE links were arrested and detained in high-security camps, while over 500 former child soldiers were transferred into rehabilitation centres. By the end of May 2010, all former LTTE-associated child soldiers had reportedly been released from rehabilitation centres. Some of the adult detainees have also been released after completing rehabilitation programmes or because they were no longer deemed to present a risk, including some persons with physical disabilities. By May 2010, around 9,000 alleged former LTTE cadres reportedly remained in closed camps. In the immediate post-conflict period, there have been allegations of enforced disappearances of persons suspected of LTTE links. Furthermore, the broad powers of arrest and detention under the Prevention of Terrorism Act (PTA) and the Emergency Regulations, have reportedly generated considerable controversy around issues such as the arrest and detention of persons suspected of LTTE links, in a number of cases allegedly on limited evidence and often for extended periods. Human rights observers have also expressed concerns regarding the broadly defined offences under the Emergency Regulations, which allow, inter alia, detention without charge for up to 18 months, and use of informal places of detention. In May 2010, the Government, however, relaxed the Emergency Regulations by withdrawing several provisions, including those dealing with the imposition of curfews, propaganda

³ Department of Foreign Affairs and Trade 2012, *DFAT Report 1446 – RRT Information Request: LKA 40999*, 22 October.

⁴ Maley P., "Sri Lanka risks losing the peace" 8 May 2010, <http://www.theaustralian.com.au/news/opinion/sri-lanka-risks-losing-the-peace/story-e6frg6zo-1225863648502>.

activities, printing of documents and distributing them in support of terrorism, as well as those restricting processions and meetings considered detrimental to national security. Amongst issues relevant to the determination of eligibility for refugee protection are allegations by a number of sources regarding: torture of persons suspected of LTTE links in detention; death of LTTE suspects whilst in custody; as well as poor prison conditions, which include severe overcrowding and lack of adequate sanitation, food, water and medical treatment. According to some reports young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE. In light of the foregoing, persons suspected of having links with the LTTE may be at risk on the ground of membership of a particular social group. Claims by persons suspected of having links with the LTTE may, however, give rise to the need to examine possible exclusion from refugee status.⁵

44. The UNHCR guidelines also provide the following relevant comments:

The Guidelines contain information on the particular profiles for which international protection needs may arise in the current context. Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country.

...

On 19 May 2009, the Government of Sri Lanka formally declared victory over the LTTE after capturing the last LTTE-controlled territories in the north of the country. This marked the end of a 26-year non-international armed conflict.

At the time of writing, the security situation in Sri Lanka had significantly stabilized, paving the way for a lasting solution for hundreds of thousands of internally displaced persons (IDPs) in the country's north and east. In August 2009, the Sri Lankan Government began to organize the return or release from IDP camps of some 280,000 persons, who were forced to flee their homes during the final phase of the conflict. Many of the initial restrictions on the freedom of movement of IDPs have been lifted, and by mid-June 2010, approximately 246,000 persons had left the displacement camps to return to their places of origin or live with host families, relatives and friends. More returns are expected to take place within the coming weeks and months. A number of those who left the camps remain, however, in a situation of displacement due to the total or partial destruction of their homes and the ongoing de-mining operations. Furthermore, IDP return has in some cases been hindered by land disputes arising from a number of issues, such as secondary occupation; the occupation of land by the military and LTTE during the conflict, including the arbitrary seizure of land belonging to Muslims by the LTTE in the north and east; the establishment of High Security Zones (HSZ) and Special Economic Zones (SEZ); and the loss of documentation.

...

All claims by asylum-seekers from Sri Lanka should be considered on their individual merits in fair and efficient refugee status determination procedures and taking into account up-to-date and relevant country of origin information. UNHCR considers that, depending on the particular circumstances of the case, some individuals with profiles similar to those outlined below require a particularly careful examination of possible risks. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing, hence a claim should not automatically be considered as without merit because it

⁵ UNHCR 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July, pp. 3-5.

does not fall within any of the profiles identified below. Some of the claims lodged by asylum-seekers from Sri Lanka will require examination of possible exclusion from refugee status.

45. The Department of Foreign Affairs and Trade issued the following advice in September 2012:

...

The security situation in the north and east is greatly improved since the end of the military conflict, although incidents of violence can occur.

A visible security forces presence remains, particularly in the Northern Province, although the number of officers has reduced slightly since the end of the conflict. The visibility of military is less than before, with officers being confined to their barracks and police responsible for law and order. The role of the security forces in the north and east, including intelligence operatives, continues to include the monitoring of anti-government sentiment, LTTE and any form of civil resistance.

Mines and unexploded ordnance remain widespread in the north, particularly the northern Vanni region, although demining is continuing. A few isolated areas which have not yet been certified as cleared of mine or UXO hazards remain in the east. The security forces continue to uncover caches of weapons, ammunition, explosives and other remnants of war in both the Eastern and Northern Provinces, although this is less frequent now than in the first couple of years after the conflict.

Incidents of abduction have significantly reduced since the time of the military conflict and the immediate aftermath of the conflict, although cases continue to be reported.

The crime wave that was reported in the Northern Province in the immediate aftermath of the conflict, including abduction for ransom and thefts, has reduced.

More generally, residents of the north continue to call for the removal of the military from their areas and a return to civilian administration. Those residents engaged in political work (in an anti-government stance) or involved in human rights work may be targeted.⁶

Failed asylum seekers and illegal departure

46. Information from the Canadian, British and Australian governments has been located which states that all Sri Lankan nationals are treated in the same manner with regard to entry procedures into Sri Lanka. This information also indicates that failed asylum seekers and Tamils are not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry.⁷ The Australian government information does indicate that non-voluntary

⁶ Department of Foreign Affairs and Trade 2012, *DFAT Report 1446 – RRT Information Request: LKA40999*, 22 October.

⁷ Immigration and Refugee Board of Canada 2011, *LKA103815.E – Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011; Rutnam, E. 2011, 'UK satisfied with Lankan deportation', *The Sunday Leader*, 26 June <http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/> – Accessed 18 November 2011; DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September.

returnees to Sri Lanka would be likely to be interviewed by the police, the State Intelligence Service (SIS), or both⁸ DFAT have also recently advised that Tamils returning to the Sri Lanka are subject to the same entry procedures as any other citizen of Sri Lanka. They also stated that they had not observed any difference in the way Tamil returnees are treated in comparison to Sinhala or Muslim returnees.⁹ However, there is alternative information available from non-government organisations (NGOs), academics and media reports indicating that failed asylum seekers are specifically held for questioning, detained and arrested at the airport on return to Sri Lanka.¹⁰ Foreign based Tamils have also reportedly been similarly treated on arrival in that country.¹¹

47. The Canadian Immigration and Refugee Board in a Response to Research Request (LKA103815.E) dated 22 August 2011 noted the comments of adjunct professor of political science at Temple University, who was conducting research on Sri Lanka, that people who left the country illegally and have no documentation upon their return are selected for screening; however, as mentioned already, they would be "safe" if they are not connected to any government-opposed activities. They also spoke to the South Asia Regional Director of the UK Border Agency who said that they:

constantly monitor the country situation, and issues of safety on return have not arisen. There is no evidence that those who were previously removed to Sri Lanka have been mistreated. All those who returned to Sri Lanka last week passed through border control procedures and were allowed to proceed without incident." (*The Sunday Leader* 27 June 2011)

48. The Danish Immigration Service undertook a fact-finding mission to Sri Lanka in July 2010 and reported in October 2010 (*Human Rights and Security Issues concerning Tamils in Sri Lanka*). The report found that if a returnee had their own passport and was unescorted they would go through airport controls without investigation. If the person was unescorted or had Emergency Travel Documents then they would be handed to the Department of Immigration and Emigration to confirm the nationality and that they were not wanted. If not wanted generally they would be allowed entry. If on the wanted list they would be handed over to the Terrorist Investigation Department for further investigation. A spokesperson from the British High Commission had not heard of returnees who were picked up by police or the intelligence service after their entry to Sri Lanka. The Norwegian Embassy reported that there were no incidents since 2008 of people being detained at the airport upon return, or having problems with re-entry although they did not formally monitor returnees. However

⁸ DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September.

⁹ Department of Foreign Affairs and Trade 2010, *Sri Lanka: Treatment of Tamils: CIS Request No LKA10612*, 21 September.

¹⁰ Immigration and Refugee Board of Canada 2011, *LKA103815.E – Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011; 'Tamils heavily victimised at Colombo airport' 2011, *Sri Lanka Guardian*, 5 January <http://www.srilankaguardian.org/2011/01/tamils-heavily-victimised-at-colombo.html> – Accessed 18 November 2011; Edmund Rice Centre 2010, *One year after the war Sri Lanka is not safe*, 19 May http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=260 – Accessed 18 November 2011.

¹¹ Jayadevan, R. 2011, 'Sri Lanka harass visiting Tamils at the Colombo airport', *Sri Lanka Guardian*, 11 June <http://www.srilankaguardian.org/2009/06/sri-lanka-harass-visiting-tamils-at.html> – Accessed 18 November 2011; Tamil Journalist Arrested at BIA' 2010, *The Sunday Leader*, 21 November <http://www.thesundayleader.lk/2010/11/21/tamil-journalist-arrested-at-bia/> – Accessed 18 November 2011.

people with a clear LTTE profile could be detained for further investigation. It was also stated that:

A diplomatic mission said that the vast majority of Tamils returning at the moment are facing a minimal risk for undergoing a scrutiny at the airport. The source commented that the way people will be screened today seem to be the result of improved intelligence, also exchange of intelligence between countries in Asia. People with a clear LTTE-profile or people suspected of money transfer would be detained for further investigations. According to the source there is in general no difference in the way Tamil and Sinhalese people are treated at the airport, and there are also examples of Sinhalese human rights defenders who have been detained for investigations.¹²

49. The Danish report also stated:

—According to the Norwegian Embassy, [in Colombo] a returnee from abroad would not be visible in the community, and it would not be a problem to find housing and a job.

50. The August 2011 IRB research response also provides relevant information obtained by their Research Directorate in a telephone interview on 30 June 2011 with “an adjunct professor of political science at Temple University, who is currently conducting research on Sri Lanka”. The professor made reference to “information from sources in Sri Lanka” which “suggests that the government has stationed former Tamil Tigers, who have sided with the government and are working with the Sri Lankan security forces” at Colombo international airport, “where they screen arriving individuals.” The professor provided the following information in relation to the treatment of Tamils or persons associated with “Tamil causes” on arrival at the airport, which indicates that such persons are “very likely” to be taken into custody. It is also indicates that there have been reports of “abuse and torture” of airport detainees:

if you are a Tamil and have any connection to the Tamil causes, it is very likely that you would be screened at the airport and taken into police custody. It is very hard for anyone that has a connection to the Tamil Tigers to go back to Sri Lanka. (Adjunct Professor 30 June 2011)

He also said that Tamils without any connection to the Tamil Tigers but with a history of opposing government policies would be considered associated with the Tigers and be screened at the airport (ibid.). The professor further stated that a person who has any past connection to the Tamil Tigers or a history of opposing the government will be detained and questioned (ibid.). He added that there have been reports of "abuse and torture" of airport detainees (ibid.).¹³

51. DFAT have also recently stated in regards to illegal departure:

Section 45 A to G of the I&E Act deals with penalties for offences under the Act. For offences committed under the I&E Act, a prison sentence from 1 to 5 years and a fine of 50,000 LKR to 200,000 LKR may be applicable. However, in reality this is seldom enforced.

¹² Danish Immigration Service 2010, Human Rights and Security Issues concerning Tamils in Sri Lanka: Report from Danish Immigration Service’s fact-finding mission from Colombo, Sri Lanka. 19 June to 3 July 2010, October, p. 26 – CISNET Sri Lanka CISLIB19345.

¹³ Immigration and Refugee Board of Canada 2011, *LKA103815.E – Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, 22 August http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e – Accessed 18 November 2011.

...

In post's experience up until 16 October 2012, no failed asylum seekers who have returned from Australia have been charged under the I&E Act Section 45 (1)(a) for offences related to their irregular departure from Sri Lanka on their arrival back in Sri Lanka.¹⁴

Extortion

52. In September 2010, DFAT noted that there had been reports that the “EPDP demands payments from tamil businesses in Jaffna”. DFAT also noted that “some businesses in Batticaloa District have been asked to make payments to individuals associated with local political/paramilitary groups in return for not being harassed/threatened”. DFAT further noted that “Police (CID/TID) imposters and paramilitary cadres have threatened to label individuals as LTTE activists if payments are not made”.¹⁵

FINDINGS AND REASONS

Country of reference

53. The applicant has claimed to be a citizen of Sri Lanka. He has provided a copy of a passport and other documentation that supports this claim. On the basis of this evidence, I find that he is a national of Sri Lanka and that this country is his receiving country under s.36(2)(aa) and s.5 of the Act.

Assessment of claims

54. There were a number of elements of the applicant’s claims that were consistent and that accorded with country information concerning the situation for Tamils during the long running war between the LTTE and the Sri Lankan government. I accept that the applicant moved to his uncle’s in Jaffna at a young age because of a fear of being recruited into the LTTE. I accept that in 1995-1997 he and his uncle’s family had to relocate to other areas owing to the conflict. I accept that on a number of occasions that he was subjected to questioning and ID checks by the authorities and that on two occasions in 2006 he was checked and accused of supporting the LTTE. I accept that he was hit on the back on the first occasion and on the second occasion he was hit with a stick and suffered injuries to his foot. I also accept that his uncle ran a [Business B] store in Jaffna and that in September 2006 his uncle received threatening phone calls from unidentified persons demanding money. I accept that his uncle was shot outside his shop by two men and that the applicant ran away and escaped to his nearby friend’s house and then went and stayed for a month with an associate of his uncle. The applicant’s claims regarding this incident are supported by documentary evidence (copies of complaint to police and police form, copy of complaint docket to HRC dated [2006], copies of letters by applicant’ aunt to the HRC, UNHCR and ICRC regarding the shooting, copy of OIC Crime Branch letter dated [2006]). I accept that the uncle fled Jaffna and later left for overseas.

¹⁴ Department of Foreign Affairs and Trade 2010, *Sri Lanka: Treatment of Tamils: CIS Request No LKA10612*, 21 September.

¹⁵ Department of Foreign Affairs and Trade 2010, *Sri Lanka: Treatment of Tamils: CIS Request No LKA10612*, 21 September.

55. I accept that a month after the incident, the applicant opened his own [Business B] store and that in 2009 his brothers came to assist him in its running. I accept that the business was and is successful and the applicant earned 150,000 rupees a month from it which is a substantial amount in Sri Lankan terms. However, I do not accept that the applicant was targeted in 2007 and 2012 as claimed or that since his departure from Sri Lanka his brother was threatened and that enquiries were made about his whereabouts. I do so for the following reasons:

- The applicant gave inconsistent evidence of a significant nature. In his statutory declaration he stated that the men on the motorbike who stopped him in February 2007 had beards. However, at the hearing he stated they had masks on and he did not know. When this was put to him at the hearing he stated that they were completely masked and he could only see their eyes. Further, in his statutory declaration he stated that these men asked him for his address and he supplied a false address. However, at the hearing he said they did not say anything else to him but ask him for the whereabouts of his uncle. When this was put to the applicant at the hearing, he stated that he could not remember whether they had asked for an address. I do not find the answers to be a satisfactory explanation as to the inconsistencies.
- The applicant has submitted documentation to support these claims that has been fabricated and his willingness to do so detracts substantially from his credibility. The copy of the complaint docket uses the term “Human Right Commission of Sri Lanka” without a plural “s” after the word “Right” which strongly indicates that it is not an authentic document. When this was put to the applicant at the hearing he said his brother got it and he himself was in Jaffna and the HRC did not question him. This does not however, provide an adequate explanation as it does not make sense for the brother to have obtained such false documentation for the applicant other than for the purpose of supporting a false protection claim. Even more significantly, the letter from the ICRC is noted as being a “detention attestation” and the applicant has not claimed to have been detained; it says that he was visited by the ICRC but the applicant has not claimed this; and the language used in this document (“by the pathetic situation in Sri Lanka”) is not consistent with the type of wording that would be used by an official body. When these issues were put to the applicant he said his brother had obtained the document for his protection and that there was a war going on. He also said the ICRC may have visited him and he may not have been there but he was not sure. I do not accept this as a satisfactory explanation as it does not make sense for the brother to have obtained such false documentation for the applicant other than for the purpose of supporting a false protection claim. Such a fake document would hardly protect him. Whilst the applicant has speculated that the ICRC may have visited him, he stated he was unsure that they did. The purported document states that he was visited and it is farfetched and implausible that the ICRC would state that they had visited him if they had not actually met him.
- More than five years had passed since his uncle was shot and more than four years had passed since the claimed incidents in 2007. I find it is farfetched and implausible that the same men (with the same voices) would still be pursuing the applicant over the whereabouts of his uncle in 2012 after such a long period of time especially as the applicant was operating a shop. The applicant’s answer at hearing that he did business with his uncle which made these men suspect him and threaten him does not

satisfactorily answer why they would wait such a long period and still have such an interest in the uncle and him.

56. Given these highly significant credibility matters, I do not accept that in February 2007 the applicant was stopped by two men on motorcycles who questioned him about the whereabouts of his uncle (or asked for his own address). I do not accept that he was threatened and physically struck. I further do not accept that later in 2007 he was stopped by two men with the same voices and asked again about the whereabouts of his uncle. I do not accept that he was threatened he would be shot. I do not accept that the applicant made any complaint to the police about either of these incidents. I do not accept that in 2012 he was stopped by two men who sounded the same and asked about his uncle's whereabouts. I do not accept that he was robbed of valuables in the claimed incident. As I do not accept that any of these events had occurred and that the applicant was of any adverse interest to such men, I do not accept that subsequent to his departure from Sri Lanka the applicant's brother has been stopped and threatened and questioned about the applicant's whereabouts.
57. In making these findings, I have taken into account the letter from the Parish Priest that states that the applicant's uncle was shot by unknown persons in 2006 and that the applicant narrowly escaped. I accept that this did occur as found above. The letter further states that since the applicant was with him he has been searched and threatened by unknown persons and that fearing for his life, he escaped to Australia. I have given this statement only very limited weight due to the massive credibility issues identified above. It does not overcome and is outweighed by my highly significant concerns about his credibility.

Tamil claims

58. The country information set out above indicates a generally improved situation for Tamils since the ending of the war with the UNHCR stating that there was no longer a presumption of eligibility for Tamils originating from the North. DFAT in particular have also recently commented that security situation in the north and east is greatly improved since the end of the military conflict, although incidents of violence can occur. A number of articles are referred to in written submissions and others are set out above indicating continuing human rights problems for Tamils in Sri Lanka. However in making my assessment, I have given far greater weight to the assessment and the UNHCR in its eligibility guidelines as to the circumstances for Tamils as it presents an authoritative and independent overall analysis of the situation for Tamils and the human rights situation in Sri Lanka. I note that the UNHCR have clearly stated that there exists substantial mistreatment of those suspected of having links with the LTTE. The UNHCR Guidelines mention the continuing disappearance of those suspected of being linked with the LTTE and note such persons as having a potential risk profile. Whilst the UNHCR has stated that are some reports that young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE, this needs to be read with the statement of the UNHCR that there was no longer a presumption of eligibility for Tamils originating from the North and other information cited above indicating an improved overall situation for Tamils which would include young, single men from the north.
59. I have accepted that in 2006, the applicant was stopped by the authorities, interrogated about links to the LTTE and physically mistreated whilst travelling through checkpoints. I accept that the applicant had on 3-4 other occasions suffered interrogation about suspected LTTE links. However, on each of these occasions he was not detained and was let go. From

these events in 2006 to his departure in 2012 he has not claimed to have been mistreated by the authorities for being linked to the LTTE. Nor has he claimed that any family members have been. Whilst the applicant's advisors have submitted that there are reports of "Sinhalaisation" of Tamil areas and the country evidence suggests some evidence of this, the applicant has not claimed that he or his family have been affected by this.

60. Considering the country information overall and his individual circumstances, I find that the applicant would not face a real chance of persecution, now or in the reasonably foreseeable future on the basis of his Tamil ethnicity or his membership of a particular social group of young, single, male, Tamils from the North or any other variant of these characteristics (such as "young, male Tamils from the North" or "Tamils from the North or East" or "Sri Lankan Tamils") from the government or any paramilitary organisation. I do not accept that there is a real chance that the applicant will be imputed with a political opinion as an anti-government supporter of the LTTE, now or in the reasonably foreseeable future. Nor do I accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka that there is a real risk of the applicant suffering significant harm for these same reasons.

Wealthy Tamil businessmen claims

61. I have accepted that the applicant's uncle was targeted for extortion in 2006 and that he was shot by unidentified men because of this. I also accept that the applicant is wealthy man by Sri Lankan standards and that his business did and continues to do very well. However, as previously found I do not accept that the applicant or his family have been subjected to any targeting or adverse treatment as claimed in 2007 and 2012. I accept that "wealthy Tamil businessmen" do constitute a particular social group in Sri Lanka and there is some independent evidence that police imposters and paramilitaries do extort businesses in Jaffna and in Sri Lanka. The applicant and his brothers have been conducting a profitable [Business B] business in Jaffna for a long period and they have not been the subject of any extortion threats. Given this and considering the country information, I do not accept that there is a real chance that the applicant will be subjected to extortion threats or face a real chance of persecution on account of his membership of the particular social group of "wealthy Tamil businessmen" now or in the reasonably foreseeable future. Nor do I accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka that there is a real risk of the applicant suffering significant harm for these same reasons.

Failed Tamil Asylum Seekers

62. The DFAT country information referred to above provides that the Sri Lankan authorities have no procedures in place to identify failed asylum seekers and that there is no difference in the treatment of deportees or returnees whether they are Sinhalese, Tamil or Muslim. It is also stated that their experience in managing the return of Sri Lankans who have made an asylum claim abroad has not shown that they are treated any differently to other deportees. Whilst I note there some reports of the mistreatment of Tamil returnees provided by the applicant's agents and others set out above these need to be weighed against other information such as that provided by DFAT that those who make an asylum claim abroad are not treated differently to other deportees and the individual circumstances of the applicant. I have given greater weight to the reports of DFAT, the UK Foreign and Commonwealth Office and the Danish Immigration Service that are authoritative and specifically charged with giving independent, overall reports of the human rights situation in

Sri Lanka and other countries. I have also given more weight to the DFAT report of September 2012 because it is the most recent. I have also taken into account other reports such the August 2011 comments of adjunct professor of political science at Temple University, who was conducting research on Sri Lanka, that people who left the country illegally and have no documentation upon their return are selected for screening; however, as mentioned already, they would be "safe" if they are not connected to any government-opposed activities. I have also taken into account the comments of the South Asia Regional Director of the UK Border Agency that they constantly monitor the country situation, and issues of safety on return have not arisen and that there is no evidence that those who were previously removed to Sri Lanka have been mistreated. Information from the Danish Immigration Service from contact with the British High Commission and Norwegian embassy that they have not heard of returning asylum seekers being mistreated or targeted adds to my assessment.

63. As previously found, I do not accept that the applicant faces a real chance of being imputed with a political opinion as a supporter of the LTTE, now or in the reasonably foreseeable future. I therefore find, based on the overall weight and authority of the country information and the applicant's individual circumstances that whilst he may be subjected to short term questioning upon his return I do not accept that this constitute serious harm or significant harm. He does not face a real chance of serious harm, now or in the reasonably foreseeable future, if he were to return to Sri Lanka as a failed asylum seeker whether this is categorised in terms of the Convention grounds of any actual or imputed political opinion or membership of a particular social group (failed asylum seekers or Tamil failed asylum seekers or returnees). Nor do I accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka that there is a real risk of the applicant suffering significant harm for these reasons.
64. It has been submitted that the applicant is at risk because he has illegally departed Sri Lanka and because he does not have an original passport or travel documentation and I have had regard to the evidence in the agents' submission. The evidence indicates that persons under the Immigration and Emigration Act can be given prison sentences from one to five years and fined between 50,000 rupees to 200,000 rupees. However very recent and authoritative information from DFAT states that this is seldom enforced and that in the post's experience, no failed asylum seekers who have returned from Australia have been charged for offences related to their irregular departure from Australia on their arrival back in Sri Lanka. Even if the applicant was subjected to a fine of up to 200,000 rupees, I find that this would not constitute either serious harm or significant harm because on his own evidence he has previously earned 150,000 rupees from his business and the business is still operating successfully. Given this information, I find that he does not face a real chance of persecution in the reasonably foreseeable future. Given this information, I do not accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka that there is a real risk of the applicant suffering significant harm for this reason.

Cumulative assessment

65. Even considering the applicant's claims cumulatively I find that the applicant does not face a real chance of persecution on the basis of race, membership of any particular social group (failed asylum seekers, young, single, Tamil males from the North, Tamil failed asylum seekers, Sri Lankan Tamils, Tamils from the North or East, wealthy Tamil businessmen), any imputed political opinion, or his illegal departure now or in the reasonably

foreseeable future. His fears are not well-founded. Even considered cumulatively, I find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka that there is a real risk of the applicant suffering significant harm.

CONCLUSIONS

66. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
67. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
68. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

69. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.